IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10643 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEEPAK N. CHHATRAPATI

Versus

GUJARAT STATE WAREHOUSING CORPORATION

Appearance:

MR AK CHITNIS for Petitioner
MR S TRIPATHY for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-11/04/2001

ORAL JUDGEMENT

This petition has been preferred for quashing and setting aside the impugned dismissal order dated 27-6-1994 passed by the Managing Director, Gujarat State Warehousing Corporation and for a direction to the

respondents to release the amount of Provident Fund including the subscription made by the employer's contribution.

2. The petitioner joined the respondent - Gujarat State Warehousing Corporation on 1-11-1963 as warehouseman. Later, he was designated as Warehouse Manager. The petitioner was due for retirement on 30-6-1994. The petitioner was suspended on 19-9-1983 for the charge relating to the irregularities in missing of stock involving shortage of 175624 bags of fertilizer amounting to Rs.15,85,069/-. The departmental inquiry was initiated against the petitioner and the charge sheet along with the statement of amputations was issued to the petitioner on 22-2-1983. Criminal proceedings were also initiated against the petitioner.

3. Inquiry Officer submitted the inquiry report in which all the charges levelled against the petitioner were reported to have been proved against the petitioner. The Disciplinary Authority issued the show-cause notice as to why major penalty of dismissal should not be imposed on the petitioner wherein the petitioner was asked to submit his representation on or before 23-6-1994 and he was given an opportunity to remain present before the Disciplinary Authority on 24-6-1994 for personal hearing. On 23-6-1994 the petitioner submitted the application in the head office which was received by the Disciplinary Authority on 24-6-1994 as he was not available on 23-6-1994 due to official tour. In that application, the petitioner asked some more time to submit his representation. That application was rejected as that was an attempt to linger on the whole process as the notice dated 16-6-1994 was issued for a limited purpose. The petitioner has not made any representation or submitted anything against the proposed penalty. However, on 24-6-1994 the petitioner was present for personal hearing but he did not chose to file any explanation or representation. After going through the inquiry report, the Disciplinary Authority came to the conclusion that the petitioner was guilty of dereliction of duty of grave nature which constituted serious misconduct. On account of the serious omission and gross negligence on the part of the petitioner, huge financial loss of Rs.15,84,069/was caused to the respondent Corporation. The Disciplinary Authority was fully satisfied with the findings recorded in the Inquiry Report in holding that the petitioner was guilty of serious charges levelled against the petitioner. In exercise of power under Clause 16(2)(ii) and 16(1)(g) of the Gujarat State Warehousing Corporation Staff

Regulations, 1971 (GSWCS Regulations, the order for dismissal of the petitioner from service of the respondent Corporation with immediate effect was passed. The Disciplinary Authority also directed to forfeit the entire gratuity amount as per the provisions of the Gratuity Rules, 1985, as the pecuniary loss caused to the Corporation is greater than the gratuity amount payable to the petitioner. The respondent - Corporation's contribution towards provident fund with interest was also directed to be recovered towards the loss caused by the petitioner to the respondent Corporation and the trustees of the Provident Fund and Gratuity Trusts were directed to pass resolution accordingly and petitioner's contribution towards the provident fund was directed to be withheld till the decision of the competent Court in the criminal case.

4. The respondents no. 1 and 2 have filed the affidavit-in-reply stating therein that the petitioner has preferred an appeal before the Executive Committee of the respondent Corporation and the said Executive Committee being Appellate Authority as per the provisions of the GSWCS Regulations was pending. Meanwhile, this petition was filed and hence this petition is liable to be dismissed on the ground of availability of alternative remedy to the petitioner. It is stated in the affidavit-in-reply that the petitioner was the Warehouse Manager in charge of the Warehouse at Navsari under the Administrative control of the respondent Corporation. He was custodian of the goods in the Warehouse. All of a sudden one day, it came to the knowledge of the respondent Corporation that 17624 bags of fertilizer amounting to Rs.15,85,069/- were missing from the warehouse under the charge of the petitioner. The respondent Corporation came to know about missing of such huge stock of fertilizer from the periodical (weekly) statement of the goods in the warehouse. The petitioner did not report about the missing stock nor the petitioner had explained as to how such huge quantity of fertilizer could vanish from the warehouse in an overnight. Thereafter, a team of officers was deputed for inspection and after inspection criminal complaint was filed in the police station at Navsari and thereafter the petitioner was placed under suspension vide order dated 6-3-=1981. The criminal case was pending and the charge sheet was submitted before the competent Court. The respondent Corporation also issued the notice to the petitioner for initiating the departmental proceedings against the petitioner. Initially, as the investigation of criminal case was pending the respondent Corporation preferred to postpone the departmental proceedings. As the petitioner

was to retire and the respondent Corporation was paying 75% of the salary to the petitioner and considering the facts and circumstances, the departmental inquiry was directed to be continued and the Inquiry Officer came to the conclusion that the charges levelled against the petitioner were proved and after complying with the formalities second notice was issued to the petitioner and the petitioner was given ample opportunity of hearing. But the petitioner has not been able to explain as to how 17624 bags of fertilizer were vanished from the warehouse and the order of dismissal came to be passed. It is admitted that the amount of gratuity was not disbursed to the petitioner and the amount of provident fund was withheld till completion of the criminal case. Considering the fact that the stocks were regularly shown as having been in the warehouse from 1976 till the date in 1981 when all of a sudden 17642 bags of fertilizer were shown to be missing, the petitioner could not take the plea that his predecessor had indulged in the irregularity and the petitioner must have come to the knowledge that after taking over the charge, the huge quantity of fertilizer was missing. He could not report the same failing to account missing 17624 bags of fertilizer, could not permit the petitioner to put blame on his predecessor and the respondent Corporation could not accept the explanation of the petitioner as a valid and reasonable. As the petitioner was paid 75% of the salary for about 13 years without taking any work from the petitioner in addition to the fact that the petitioner caused loss amounting to Rs.15,85,069/-. Therefore, the impugned order of dismissal was justified and was not liable to be interfered by this Court.

5. First contention of the learned counsel for the petitioner is that the departmental inquiry remained pending for about 13 years and on account of inordinate delay the departmental inquiry is vitiated and he cited some decisions of the Supreme Court on this point. I have considered that aspect. In the present case, the criminal case was pending against the petitioner and therefore the respondent Corporation thought it fit to suspend the departmental proceedings due to pendency of the criminal proceedings, the departmental proceedings were directed to be restarted against the petitioner due to undue delay. Delay has been caused due to the pendency of the criminal proceedings in respect of misappropriation of the government property. it is admitted by the learned counsel for the petitioner that after passing of the impugned dismissal order, the criminal proceedings have ended in acquittal and the petitioner was held to be innocent in the criminal

proceedings. This is not a case in which inordinate delay has been caused without any reasonable cause. Inordinate delay has been caused due to pendency of the criminal proceedings. It is a well settled law that departmental proceedings cannot be vitiated merely on the ground of delay. Moreover, delay is fully explained. Hence, the contention of the learned counsel for the petitioner that the departmental proceedings are vitiated on the ground of delay, has no substance.

6. The next contention of the learned counsel for the petitioner is that the petitioner was not given full opportunity of hearing before passing the impugned order of dismissal. Mr. B.K. Jani was examined in the departmental inquiry and during the course of his cross-examination 50 questions were taken on record. The petitioner requested to give more time for cross-examining witness Mr. B.K. Jani. However, the Inquiry Officer considered that sufficient opportunity of hearing has been given to the petitioner and unnecessary delay should not be allowed as the petitioner was making attempts to linger the proceedings as he was to retire within a short time. Though the petitioner raised plea that the copies of the statement of the witnesses were not supplied to him and closing the evidence of the witness was not justified. I have considered this contention of the learned counsel for the petitioner and the material on record and I come to a conclusion that the sufficient opportunity has already been given to the petitioner to cross-examine witness B.K. Jani. As such, it cannot be said that the petitioner was not given a reasonable opportunity for cross-examine the aforesaid witness.

7. The next contention of the learned counsel for the petitioner is that the charges in the departmental proceedings and the criminal proceedings were the same and the Criminal Court has acquitted the petitioner as Criminal Court found the charges not proved against him. Hence, the impugned order of dismissal is required to be quashed and set aside. I do not find any substance or merit in this argument of the learned counsel for the petitioner inasmuch the charges made in the departmental proceedings are totally different from the charges framed in the criminal proceedings u/s 409 of the I.P. Code. Moreover, the petitioner having been not guilty in the criminal proceedings, the department is at liberty to dismiss the petition from the service on the basis of the evidence on record in the departmental proceedings. Hence, this argument of the learned counsel for the petitioner does not stand at all.

8. In the last, the learned counsel for the petitioner contended that the contribution made by the petitioner has been only paid in the year 1999 and the benefit of interest was also given upto the year 1994 and not till the date of payment of provident fund contribution and therefore the petitioner is entitled to interest for the period of five years on the amount of provident fund paid to the petitioner from the date on which the petitioner was paid provident fund from 1994 to 1999. It is also submitted by the learned counsel for the petitioner that the petitioner was also entitled to the contribution made by the respondent Corporation towards provident fund. Learned counsel for the respondent also halfheartedly contended that the petitioner is entitled to the gratuity amount on the ground that the powers have not been exercised properly under the aforesaid GSWCS Regulations 1971 for withholding the gratuity amount. The respondent Corporation can forfeit gratuity amount by way of punishment if huge loss has been caused to it due to misconduct of the delinquent. The contention of the learned counsel for the petitioner is that the petitioner is required to have an opportunity to meet out as to whether the contribution made by the respondent Corporation towards the provident fund of the petitioner should be withheld or not. The opportunity of hearing in this respect has not been given to the petitioner. Admittedly, the contribution made by the petitioner has been paid in the year 1999 though the petitioner was dismissed in year 1994 by the order dated 27-6-1994. As such, in the facts and circumstances of this case, I think it just and proper to hold that the petitioner is entitled to the interest on the contribution made by the petitioner towards his provident fund from the date of his retirement till the payment of the provident fund made by the petitioner in the year 1999. So far as the contribution towards provident fund made by the respondent Corporation is concerned, it was withheld subject to the final decision of the competent Court in the criminal proceedings pending before the trial Court. As the petitioner has now already been acquitted from the criminal proceedings by the competent Court and the petitioner was required to be given an opportunity of hearing before withholding the contribution made by the respondent Corporation towards provident fund of the petitioner and that opportunity has not been given to the petitioner. As such, the petitioner is entitled to the contribution made by the respondent Corporation towards the provident fund of the petitioner together with the interest at the rate permissible under the relevant Rules

and Regulations.

9. Therefore, this petition deserves to be allowed only to the extent of interest on the contribution made by the petitioner towards his provident fund from 1994 till 1999 as well as the contribution made by the respondent Corporation towards provident fund of the petitioner together with interest as permissible under the aforesaid Regulations, 1971. Accordingly, this petition is allowed in part. The respondent Corporation is directed to pay interest on the contribution of provident fund of the petitioner till the date on which part of the contribution was paid to the petitioner. The respondent Corporation is further directed to pay the amount of contribution made by the respondent Corporation towards provident fund of the petitioner together with interest at the rate permissible under the relevant Rules and Regulations, within a period of three months from the date of receipt of writ of this Court or presentation of a certified copy of this order. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/